

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM:** Martin D. Kiar, Assistant Town Attorney

**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, CREATING DAVIE TOWN SECTIONS 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11), REQUIRING REACH RETAIL GASOLINE STATION ON OR AFTER A SPECIFIED DATE TO BE EQUIPPED WITH A BACKUP POWER SYSTEM OR ALTERNATIVE PUMPING SYSTEM SO THAT EACH OF THE GASOLINE STATION'S FUEL PUMPS MAY BE OPERATED IN THE EVENT OF A POWER OUTAGE; PROVIDING THAT GASOLINE STATIONS LOCATED ON THE GROUNDS OF, OR OWNED BY ANOTHER RETAIL ESTABLISHMENT WOULD BE INCLUDED; PROVIDING FOR AUTHORIZATION TO EXEMPT CERTAIN GASOLINE STATIONS FROM THE REQUIREMENT OF THIS SECTION; PROVIDING FOR APPEAL; PROVIDING A PENALTY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** Hurricane Wilma, which made landfall in South Florida in the morning hours of October 24, 2005, created a serious crisis throughout the region involving the shortage of fuel which was the result of power outages which rendered inoperable a very large percentage of the gasoline stations in the region. This Ordinance would require each retail gasoline station located in the Town to be equipped with a back-up power system or alternative pumping system so that each of the gasoline station's fuel pumps may be operated in the event of a power outage.

**PREVIOUS ACTIONS:** None

**CONCURRENCES:** N/A

**FISCAL IMPACT:** N/A

**RECOMMENDATION(S):** Ready for submittal to Town Council for its review

**ATTACHMENTS:** Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, CREATING DAVIE TOWN CODE SECTIONS 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11), REQUIRING EACH RETAIL GASOLINE STATION ON OR AFTER A SPECIFIED DATE TO BE EQUIPPED WITH A BACKUP POWER SYSTEM OR ALTERNATIVE PUMPING SYSTEM SO THAT EACH OF THE GASOLINE STATIONS FUEL PUMPS MAY BE OPERATED IN THE EVENT OF A POWER OUTAGE; PROVIDING THAT GASOLINE STATIONS LOCATED ON THE GROUNDS OF, OR OWNED BY ANOTHER RETAIL ESTABLISHMENT WOULD BE INCLUDED; PROVIDING FOR AUTHORIZATION TO EXEMPT CERTAIN GASOLINE STATIONS FROM THE REQUIREMENTS OF THIS SECTION; PROVIDING FOR APPEAL; PROVIDING A PENALTY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Hurricane Wilma made landfall in South Florida in the morning hours of October 24, 2005; and

**WHEREAS**, the hurricane created a serious crisis throughout the region involving the shortage of fuel; and

**WHEREAS**, fuel is an indispensable commodity, necessary for transportation and emergency electrical power to serve both hurricane victims and rescue and law enforcement personnel; and

**WHEREAS**, the fuel shortage was the result of a power outage which rendered inoperable a very large percentage of the gasoline stations in the region; and

**WHEREAS**, sec. 166.021(1), Florida Statutes states that “municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law”.

**WHEREAS**, a municipal purpose is defined in sec. 166.021(2), Florida Statutes to mean “any activity or power which may be exercised by the state or its political subdivisions”, and

**WHEREAS**, gasoline stations that sell gasoline to consumers at retail, did not have alternative power sources for operations following Hurricane Wilma, thereby negatively exacerbating the state of emergency created, and thereby unnecessarily endangering the public health, safety, and welfare; and

**WHEREAS**, the protection of this community requires that this situation not be repeated and that gasoline stations provide for an uninterrupted supply of alternative power sufficient to operate the pumps during times of emergency needs; and

**WHEREAS**, these measures are essential for the protection of the safety of our community in the event of emergency conditions created by the recently experienced more active hurricane seasons; and

**WHEREAS**, the Town of Davie is not attempting to govern the design, construction, erection, alteration, modification, repair or demolition of buildings, structures or facilities by the creation of this ordinance; and

**WHEREAS**, the Town of Davie wishes to provide for a programmatic requirement as provided under Florida law for those businesses which wish to offer motor fuel for sale to the public; and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:**

**SECTION 1.** Davie Town Code Sections 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11) are hereby created to read:

Sec. 12-34(Y)(6). Findings:

The Town finds that the need for electrical power is vital, especially after a natural disaster or a man-made event causes a power outage. The Town also finds that gasoline is an indispensable commodity necessary for transportation and for providing goods to the community and for powering back-up power systems, such as electrical generators, during a power outage. When such a commodity is not available due to power outages caused by a natural disaster or a man-made event, the health, safety and welfare of the citizens is negatively impacted. The increasing use of gasoline-powered electrical generators in the event of a power outage creates an urgent need for gasoline to be readily available.

Sec. 12-34(Y)(7). Purpose:

The purpose of the following regulations is to promote the health, safety and welfare of the public by requiring the various gasoline suppliers to provide for an uninterrupted supply of alternative power sufficient to operate the pumps during times of emergency need.

Sec. 12-34(Y)(8). Back-up Power of Pumping System Required for Certain Gasoline Stations:

(a) Each retail gasoline station that offers motor fuel for sale to the public within the Town of Davie must be equipped with a back-up power system or other alternative pumping system no later than August 1, 2006 so that the station's fuel pumps may be operated in the event of a power outage. The back-up power system or other alternative pumping system must be maintained and kept fully operational at all times. This subsection applies to any retail gasoline station that is newly constructed or substantially renovated, and for which a certificate of occupancy is issued on or after August 1, 2006. As used in this ordinance, "substantially renovated" means a renovation that resulted in an increase in the assessed value of the retail gasoline station of greater than 50%. This subsection also applies to all existing retail gasoline stations. As used in this ordinance, "existing retail gasoline stations" means retail gasoline stations located within the Town of Davie that offer gasoline for sale to the public as of the date this Ordinance becomes effective. ~~Alternatively, each retail gasoline station that offers motor fuel for sale to the public within the Town of Davie may fulfill the requirements of this section by filing, on or before August 1, 2006, a detailed plan ("Gasoline Station Emergency Plan") with the Town's Director of Planning & Zoning. The plan will demonstrate that said gasoline station has available a backup power system or other alternative pumping system that can be fully operational within 48 hours after a power outage occurs during a declared emergency that shall be maintained and kept fully operational until regular power is restored to said filling stations. This subsection applies to any retail gasoline station that is newly constructed or substantially renovated, and for which a certificate of occupancy is issued on or after August 1, 2006. As used in this section, "substantially renovated" means a renovation that resulted in an increase in the assessed value of the retail gasoline station of greater than 50%. This subsection also applies to all existing retail gasoline stations. As used in this section, "existing retail gasoline stations" means retail gasoline stations located within the Town of Davie that offer gasoline for sale to the public as of the date this Ordinance becomes effective. Existing gasoline stations shall fully comply with the requirements of this Ordinance no later than August 1, 2006.~~

(b) Alternatively, each existing retail gasoline station that offers motor fuel for sale to the public within the Town of Davie may fulfill the requirements of this Ordinance by filing, on or before August 1, 2006, a detailed plan ("Gasoline Station Emergency Plan") with the Town's Director of Planning & Zoning. The plan will demonstrate that said gasoline station has available a backup power system or other alternative pumping system that can be fully operational within 48 hours after a power outage occurs during a declared emergency that shall be maintained and kept fully operational until regular power is restored to said filling stations. This subsection only applies to existing retail gasoline stations and does not apply to any retail gasoline station that is newly constructed or substantially renovated.

(c) Subsections (a) and (b) apply to any self-service gasoline station or full-service gasoline service station, regardless of whether the gasoline station is located on the grounds of, or is owned by, another retail business establishment that does not engage in the business of selling motor fuel.

(d) In the event of any material change with respect to any of the provisions of the Gasoline Station Emergency Plan, the revisions shall be communicated to the Town's Planning & Zoning Director in writing, for the Director's approval, wherever possible in advance of the proposed change and in no event, later than 60 days following the adoption of

the change.

Sec. 12-34(Y)(9). Town's Planning & Zoning Director's Authority and Discretion: Exemption; Appeal.

(a) ~~The Town Council~~ ~~Town's Director of Planning & Zoning~~ ("Director") shall be entitled, in ~~its~~ ~~his or her~~ discretion, to exempt a gasoline station from the requirements of this ordinance. An exemption is based upon a retail gasoline station owner's ability to prove that he or she cannot comply with this ordinance by August 1, 2006, due to a demonstrable hardship that renders compliance impossible by said date. ~~The Director~~ Town's Director of Planning & Zoning ("Director") ~~may also shall~~ establish criteria ~~to review in determining~~ be presented to the Town Council for its review so that the Town Council can make a proper determination as to whether or not the owner has demonstrated a hardship, which criteria may include size, volume and location of the gasoline station. A retail gasoline station owner ("Owner") who believes that he or she can demonstrate a hardship rendering compliance impossible by August 1, 2006 must apply for an exemption in writing to the Director on or before July 1, 2006. The Director shall ~~then submit~~ ~~review~~ said request for exemption ~~to the Town Council at its next regularly scheduled meeting so that the Town Council can and shall~~ grant or deny said request ~~in writing~~ or within the Town Council's ~~Director's~~ discretion, grant a reasonable extension of time to comply with the provisions of this ordinance. ~~and deliver his or her decision to the owner on or before July 15, 2006.~~

(b) Should a permit exemption or an extension of time to comply be denied by the Town Council ~~Department~~, the applicant shall be advised of the specific cause for denial.

(c) Within thirty (30) days of a decision by the Town Council, ~~Director~~, any person who receives an adverse decision may seek a review of such decision in Broward County Circuit Court in the manner provided by state law. Failure to appeal within 30 days from the date of the Town Council's ~~Department's~~ final denial shall result in a person waiving his or her right to appeal.

Sec. 12-34(Y)(10).

(a) This provisions of Davie Town Code Sections 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11) shall preempt and supercede any inconsistent municipal ordinance to the same effect.

(b) Nothing in Davie Town Code Sections 12-34(y)(6), 12-34(y)(7), 12-34(y)(8), 12-34(y)(9), 12-34(y)(10) and 12-34(y)(11) shall be interpreted to curtail, impede or otherwise affect the discretionary authority of the Town in the exercise of its police power, administrative or regulatory functions.

Sec. 12-34(Y)(11). Penalty:

A violation of this article is a violation of the Town of Davie Code and is punishable by a fine not to exceed five hundred dollars (\$500.00) per day, with each day a violation constituting a separate offense or imprisonment for a term not exceeding sixty (60) days, or both fine and imprisonment. This article shall also be enforceable through injunctive relief through the Town Attorney's office as a means of protection of the public interest through

the exercise of the Town's police power, and through any other means available at law. Further, this ordinance shall be enforceable through a duly noticed code enforcement proceeding brought pursuant to Florida Statute chapter 162.

**SECTION 2. CONFLICT.** All ordinances or parts of ordinances, all Town Code sections or parts of Town Code sections, and all resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3. SEVERABILITY.** Should any provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not effect the validity of the Ordinance as a whole, or any part thereof, other than the part declared to be invalid.

**SECTION 4. INCLUSION IN THE TOWN CODE.** It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Town of Davie Code of Ordinances.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be effective immediately upon its passage.

PASSED ON THIS FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

PASSED ON THIS SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

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MAYOR/COUNCILMEMBER

ATTEST

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.